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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,083	02/15/2001	David H. McDaniel	071340.0019	5784

25227 7590 03/24/2006
MORRISON & FOERSTER LLP
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MCLEAN, VA 22102

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/819,083		MCDANIEL, DAVID H.	
	Examiner		Art Unit	
	Ahmed M. Farah		3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 31, 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/13/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7 and 9 are again rejected under 35 U.S.C. 102(b) as being anticipated by Doiron et al. U.S. Patent No. 5,698,866

Doiron et al. disclose a phototherapeutic device useful for treating skin conditions such as psoriasis and hyperbilirubinemia, the device comprising a plurality of light emitting diodes. Doiron et al. further teach that the method of treating psoriasis with the aide of photoactive agent applied to the skin, and irradiating the effected skin with an optical energy from LED array is known in the art (see col. 3, lines 37-48).

In the response filed on October 31, 2005, the applicant argues that the reference in which Doiron et al. relied upon fails to teach a method of treating psoriasis. The reference obtained and submitted by the applicant is not clear and cannot be read. Hence, since a clear copy of the reference in question is not available to the examiner at the moment, the Office relies on the interpretation of Doiron et al. and therefore maintains the rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman US Patent No. 6,413,268 in view of Doiron et al., described above.

Hartman discloses a method for treating psoriasis by irradiating the affected skin with a UV light. He further teaches that the use of photoactive agents during phototherapy treatment of psoriasis is well known in the art (see col. 1, lines 22-24). However, Hartman fails to disclose the types of the energy sources used in the prior art. Doiron et al. disclose an alternative phototherapeutic device useful for treating skin conditions, the device comprising a plurality of light emitting diodes.

Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Hartman in view of Doiron et al. and use an LED(s) as an equivalent alternative light source to provide the treatment energy.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hartman in view of Doiron et al as applied to claims 7-9 above, and further in view of Tankovich et al. US Patent No. 5,817,089.

Neither Hartman nor Doiron et al teach the use of ultrasound to aide the treatment of psoriasis. However, the applicant's written description teaches that the

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ultrasound is used to enhance penetration of particles/agents into the tissue. Applicant further recognizes that the use of ultrasonic energy to enhance penetration of particles into a tissue site is known in the art. In particular, page 15, lines 5-8 of the applicant's specification clearly teaches that Tankovich et al. ('089) use ultrasonic energy to enhance penetration of hair dye into the hair shaft.

Therefore, at the time of the applicant's invention, it would have been obvious to one skilled in the art to modify Hartman in view of Tankovich et al. and use ultrasonic energy in order to enhance penetration of the photoactive agent into the tissue.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon-Thur 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

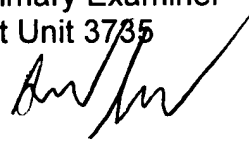
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you have questions on access to the Private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

Ahmed M Farah
Primary Examiner
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A handwritten signature in black ink, appearing to read 'Ahmed M Farah', is written over the printed name and title.

March 19, 2006.